

**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

JOHN M. WADE, an Individual, and )  
NATASHA BROWN, an Individual, )  
On Behalf of Themselves and All )  
Others Similarly Situated, )

Plaintiffs, )

v. )

LAW OFFICE OF MARK A. )  
CAREY; MARK A. CAREY; and )  
JOHN AND JANE DOES NOS. )  
1-25, )

Defendants. )

CIVIL ACTION NO.

CV10-5900

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS**  
**LAW OFFICE OF MARK A. CAREY AND MARK A. CAREY**

NOW COMES Defendant Mark A. Carey, an individual, pro se, on behalf of  
himself and on behalf of the Law Office of Mark A. Carey, a now defunct law  
firm, and hereby files their Answer and Affirmative Defenses to Plaintiffs  
Complaint as follows:

**FIRST DEFENSE**

Plaintiffs' Complaint, and each subpart thereof, fails to state a claim upon  
which relief can be granted.

**SECOND DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitation and/or repose.

**THIRD DEFENSE**

Plaintiffs' claims are barred by the doctrine of laches.

**FOURTH DEFENSE**

Plaintiffs' claims are barred by waiver and/or estoppel.

**FIFTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to mitigate damages.

**SIXTH DEFENSE**

Defendants did not breach any duty owed to Plaintiffs, and therefore Plaintiffs are barred from any recovery against Defendants.

**SEVENTH DEFENSE**

Defendants are currently without knowledge or information sufficient to form a belief as to whether other affirmative defenses apply in this matter. Defendants expressly reserve their rights to raise any additional affirmative defenses that may be applicable.

**EIGHTH DEFENSE**

Plaintiffs have improperly named Defendants Law Office of Mark A. Carey and Mark A. Carey.

**NINTH DEFENSE**

The actions complained of by Plaintiffs were conducted by persons acting outside the scope of their employment--if they were employed by the Defendants Law Office of Mark A. Carey and Mark A. Carey at all--and against the strict rules of compliance mandated by Defendants Law Office of Mark A. Carey and Mark A. Carey.

**TENTH DEFENSE**

The actions complained of by Plaintiffs were part of a criminal enterprise conducted by third parties unrelated to Defendants Law Office of Mark A. Carey and Mark A. Carey that said Defendants had no knowledge of nor could have had any knowledge of.

**ELEVENTH DEFENSE**

The actions complained of by Plaintiffs took place after the Law Office of Mark A. Carey had shut down and were not made by Defendants Mark A. Carey or Law Office of Mark A. Carey

## **TWELFTH DEFENSE**

Defendants answer the allegations contained in Plaintiffs' Complaint as follows:

### **I.PRELIMINARY STATEMENT**

1.

Defendant Mark A. Carey, an individual, pro se, on behalf of himself and on behalf of the Law Office of Mark A. Carey, a now defunct law firm, hereby files this Answer to Plaintiffs Complaint.

2.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 2 of Plaintiffs' Complaint.

3.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 3 of Plaintiffs' Complaint.

4.

To the extent paragraph 4 of Plaintiffs' Complaint requires an answer, Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 4.

5.

To the extent paragraph 5 of Plaintiffs' Complaint requires an answer, Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 5.

6.

To the extent paragraph 6 of Plaintiffs' Complaint requires an answer, Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 6.

7.

To the extent paragraph 7 of Plaintiffs' Complaint requires an answer, Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 7.

8.

To the extent paragraph 8 of Plaintiffs' Complaint requires an answer, Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 8.

9.

To the extent paragraph 9 of Plaintiffs' Complaint requires an answer, Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations

contained in paragraph 9. Defendants Law Office of Mark A. Carey and Mark A. Carey request that this alleged "class" not be certified and that this case be dismissed

## **II. PARTIES**

10.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 10 of Plaintiffs' Complaint.

11.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 11 of Plaintiffs' Complaint.

12.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 12 of Plaintiffs' Complaint.

13.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 13 of Plaintiffs' Complaint.

14.

Defendant Law Office of Mark A. Carey denies the allegation contained in paragraph 14 of Plaintiffs' Complaint.

15.

Defendant Mark A. Carey denies the allegations contained in paragraph 15 of Plaintiffs' Complaint and does not submit to the jurisdiction of this Court merely by filing an Answer in this matter.

16.

To the extent paragraph 16 of Plaintiffs' Complaint requires an answer, Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 16.

17.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 17 of Plaintiffs' Complaint.

### **III. JURISDICTION AND VENUE**

18.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 18 of Plaintiffs' Complaint.

19.

Defendant Mark A. Carey denies that venue is proper in this Court as Defendant Mark A. Carey is a resident of the State of Georgia and was a resident of the State of Georgia at the time of the filing of this Complaint. Defendant Law Office of Mark A. Carey was no longer in business at the time of the filing of Plaintiffs' Complaint and thus venue is inappropriate in the State of New York.

20.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 20 of Plaintiffs' Complaint.

### **IV. FACTS CONCERNING JOHN M. WADE**

21.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and



therefore must deny the allegations contained in paragraph 21 of Plaintiffs' Complaint.

22.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 22 of Plaintiffs' Complaint.

23.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 23 of Plaintiffs' Complaint.

24.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 24 of Plaintiffs' Complaint.

25.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and

therefore must deny the allegations contained in paragraph 25 of Plaintiffs' Complaint.

26.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 26 of Plaintiffs' Complaint.

27.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 27 of Plaintiffs' Complaint.

28.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 28 of Plaintiffs' Complaint.

29.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 29 of Plaintiffs' Complaint.

30.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 30 of Plaintiffs' Complaint.

31.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 31 of Plaintiffs' Complaint.

32.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 32 of Plaintiffs' Complaint.

33.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 33 of Plaintiffs' Complaint.

34.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 34 of Plaintiffs' Complaint.

35.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 35 of Plaintiffs' Complaint.

36.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 36 of Plaintiffs' Complaint.

**V.FACTS CONCERNING NATASHA BROWN**

37.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and

therefore must deny the allegations contained in paragraph 37 of Plaintiffs' Complaint.

38.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 38 of Plaintiffs' Complaint.

39.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 39 of Plaintiffs' Complaint.

40.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 40 of Plaintiffs' Complaint.

41.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and

therefore must deny the allegations contained in paragraph 41 of Plaintiffs' Complaint.

42.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 42 of Plaintiffs' Complaint.

43.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 43 of Plaintiffs' Complaint.

44.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 44 of Plaintiffs' Complaint.

45.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and

therefore must deny the allegations contained in paragraph 45 of Plaintiffs' Complaint.

46.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 46 of Plaintiffs' Complaint.

47.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 47 of Plaintiffs' Complaint.

48.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 48 of Plaintiffs' Complaint.

49.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and

therefore must deny the allegations contained in paragraph 49 of Plaintiffs' Complaint.

50.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 50 of Plaintiffs' Complaint.

51.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 51 of Plaintiffs' Complaint.

#### **VI.FACTS COMMON TO ALL PLAINTIFFS**

52.

Defendant Mark A. Carey denies the allegations contained in paragraph 52 to the extent that the allegations apply to him. Defendant Law Office of Mark A. Carey admits that a portion of its practice was dedicated to the collection of debts but does not admit that it was collecting a debt belonging to either of the listed Plaintiffs in the present action. Defendant Law Office of Mark A. Carey further denies that it used the Internet in an attempt to collect a debt.



53.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 53 of Plaintiffs' Complaint.

54.

Defendants Law Office of Mark A. Carey and Mark A. Carey admit the allegations contained in paragraph 54 of Plaintiffs' Complaint.

55.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 55 of Plaintiffs' Complaint.

56.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 56 of Plaintiffs' Complaint.

57.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 57 of Plaintiffs' Complaint.

58.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and

therefore must deny the allegations contained in paragraph 58 of Plaintiffs' Complaint.

59.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 59 of Plaintiffs' Complaint.

60.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 60 of Plaintiffs' Complaint.

61.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 61 of Plaintiffs' Complaint.

62.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and

therefore must deny the allegations contained in paragraph 62 of Plaintiffs' Complaint.

63.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 63 of Plaintiffs' Complaint.

64.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 64 of Plaintiffs' Complaint.

65.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 65 of Plaintiffs' Complaint.

66.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and

therefore must deny the allegations contained in paragraph 66 of Plaintiffs' Complaint.

67.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 67 of Plaintiffs' Complaint.

68.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 68 of Plaintiffs' Complaint.

69.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 69 of Plaintiffs' Complaint.

70.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 70 of Plaintiffs' Complaint.

71.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 71 of Plaintiffs' Complaint.

**VII. POLICIES AND PRACTICES COMPLAINED OF**

72.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 72 of Plaintiffs' Complaint.

73.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 73 of Plaintiffs' Complaint.

**VIII. CLASS ALLEGATIONS**

74.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 74 of Plaintiffs' Complaint.

75.

Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 75 of Plaintiffs' Complaint.

76.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 76 of Plaintiffs' Complaint.

77.

To the extent paragraph 77 contains an allegation, Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 77 of Plaintiffs' Complaint.

78.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 78 of Plaintiffs' Complaint.

79.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 79 of Plaintiffs' Complaint.

80.

To the extent paragraph 80 contains an allegation, Defendants Law Office of Mark A. Carey and Mark A. Carey are without knowledge sufficient to form a belief as to the truth of the matter asserted and therefore must deny the allegations contained in paragraph 80 of Plaintiffs' Complaint.

81.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegation contained in paragraph 81 of Plaintiffs' Complaint especially as it pertains to commonality and numerosity.

82.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 82 of Plaintiffs' Complaint.

83.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 83 of Plaintiffs' Complaint.

84.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 84 of Plaintiffs' Complaint.

**IX. FIRST CAUSE OF ACTION – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT (AGAINST ALL DEFENDANTS)**

85.

Defendants restate and incorporate by reference their responses to paragraphs 1 through 84 of Plaintiffs' Complaint as if fully set forth herein.

86.

Defendants Law Office of Mark A. Carey and Mark A. Carey deny the allegations contained in paragraph 86 of Plaintiffs' Complaint.

**THIRTEENTH DEFENSE**

Defendants deny any and all allegations not specifically admitted herein.

**XI. JURY DEMAND**

WHEREFORE, Defendants Law Office of Mark A. Carey and Mark A.

Carey pray:

- (a) that this action not be certified as a class action;
- (b) that claims against Mark A. Carey, individually, be dismissed for lack of personal jurisdiction;
- (c) that claims against Mark A. Carey, individually, be dismissed for failure to state a claim upon which relief can be granted;



- (d) that claims against Law Office of Mark A. Carey be dismissed for lack of personal jurisdiction and because the entity was no longer an operating business at the time this action was filed;
- (e) that claims against Law Office of Mark A. Carey be dismissed for failure to state a claim against Law Office of Mark A. Carey;
- (f) that Plaintiffs' Complaint be dismissed with prejudice;
- (g) that judgment be entered in favor of Defendants;
- (h) that Plaintiffs recover nothing from Defendants;
- (i) that all costs of this action be assessed against Plaintiffs; and
- (j) that this Court grant all other and further relief as is just and proper.

Respectfully submitted, this 28th day of June, 2011.



/s/ Mark A. Carey

MARK A. CAREY

Pro Se

1360 Hampton Hall Road  
Atlanta, Georgia 30319  
(716) 880-0747

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served all parties in the foregoing matter with the foregoing Answer and Affirmative Defenses of Defendants Law Office of Mark A. Carey, P.C. and Mark A. Carey, P.C. by depositing a copy of same in the United States Mail, with adequate postage thereon, properly addressed as follows:

William F. Horn  
Law Office of William F. Horn  
188-01B 71<sup>st</sup> Crescent  
Fresh Meadows, New York 1315

This 28th day of June, 2011.



/s/ Mark A. Carey

MARK A. CAREY

Pro Se